

GAHC010086192020



2024:GAU-AS:10584

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./145/2020

CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS HEAD OF BRANCH, CBI/ANTI CORRUPTION BRANCH, OPP.
BALAJI TEMPLE, BETKUCHI, GHY-35, ASSAM

VERSUS

DIBYAJYOTI DUTTA (A-1)
MANAGER (SALES) IOC, (AOD), GHY, ADD. NILGIRI PATH, NEAR HOTEL
BIKASH INN, PUNJABARI, KALAKSHETRA, GHY

2:LALCHAND CHOUDHARY @ LALARAM (A-2)
ADD. OLIVE SERVICE STATION
6 MILES
DIMAPUR
NAGALAND AND MEDZIPEMA
AUTO CENTRE
DIMAPUR
NAGALAND

3:SHERI LAXMI NARAYAN SOGANI @ LICHUBABU (A-3)
ADD. FLAT NO. A-4
PANCHRATNA APARTMENTS
SJ ROAD
ATHGAON
GHY

4:SHRI TONY @ ANKEET (A-4)
ADD. 9TH FLOOR
BLOCK 7/B
NEHA APARTMENT
ATHGAON
GUWAHATI

5:MsBENDANGNARAO (A-5)
ADD. BUNMA CAMP
EAST BLOCK
HOUSE NO.155
DIMAPUR
NAGALANG-797112

Advocate for the Petitioner : MR M HALOI, SC, CBI

Advocate for the Respondent : MR. S S S RAHMAN (R-1), MR. I BORTHAKUR (R-5), MR. D GOGOI (R-5), MR. D BORA (R-3 & 4), MR. N MAHAJAN (R-3 & 4), MR. S A BARBHUYAN (R-1), MR. J ABBAS (R-1), MR. S BORTHAKUR (R-1), MR. D GOGOI (R-2), MR. D GOGOI (R-5), MR. A W AMAN (R-1), SYED BURHANUR RAHMAN (R-1)

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 25.06.2024

Date of Judgment & Order : 29.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. Haloi, learned Special Public Prosecutor, CBI for the petitioner. Also heard Mr. S. Borthakur, learned counsel appearing on behalf of the respondent No. 1; Mr. D. Gogoi, learned counsel appearing for the respondent Nos. 2 & 5; and Mr. D. Bora, learned counsel appearing on behalf of the respondent Nos. 3 & 4.

2. This is an application under Section 397 *read with* Section 401 of the Code of Criminal Procedure, 1973 against the order dated 26.02.2020, passed by the learned Special Judge, CBI, Guwahati in CBI Case No. RC-

01(A)/2019/CBI/ACB/Guwahati, whereby the prayer for recording of voice samples of accused/ respondents was rejected by the learned Special Judge, CBI.

3. In brief, it is the case of the petitioner/CBI that the CBI-ACB, Guwahati Branch has registered a case vide Case No. RC0172019A0001 against Shri Dibyajyoti Dutta (A1), General Manager (Sales) IOC, (AOD), Guwahati; Shri Lalchand Choudhary @ Lalaram (A2); Shri Laxmi Narayan Sogani @ LichuBabu (A3); Shri Tony @ Ankeet (A4); Ms. Bendangnaro Ao (A5); and some other unknown persons under Section 120B of the Indian Penal Code *read with* Section 7 (A), 8 & 12 of the Prevention of Corruption (Amendment) Act, 2018 based on source information and accordingly the matter was taken up for investigation. It is alleged in the F.I.R. that the respondent/ Dibyajyoti Dutta, while working as General Manager (Sales), Indian Oil Corporation (Assam Lil Division), Guwahati during the year 2018-19, has entered into a criminal conspiracy with other accused persons, who were officially dealing with him, by abusing his official position and demanded and accepted illegal gratification frequently from private accused persons and other different private businessmen owing Petrol Pump and/or having Kerosene Oil Dealership in connivance with few private firm for showing them official favour in allotment of new Retail Outlets for the places spread all over the Northeast States including the Assam.

4. During investigation, all the 5 (five) numbers of F.I.R. named accused persons were arrested and produced before the learned Special Judge, CBI at Guwahati and after expiry of the police remand, all the accused persons were

sent to judicial custody. The recording of the conversations held between the accused persons were also collected. The conversations between Dibyajyoti Dutta (A1) and Laxmi Narayan Sogani @ LichuBabu (A3) and conversation between Dibyajyoti Dutta (A1) and Tony @ Ankeet (A4), which were recorded indicates illegal transaction between the accused persons. During the relevant period of time, Tony @ Ankeet (A4) was working as Manager under Laxmi Narayan Sogani @ LichuBabu (A3) in M/S Danmal Sogani & Sons, Fancy Bazar, Guwahati and the recorded conversations of the accused persons and its transcription has already indicated the role of all the accused persons.

5. During investigation, all the accused persons were requested to give their voice sample for the purpose of getting expert opinion on recorded conversation, out of which the respondents- Shri Dibyajyoti Dutta (A1), Shri Laxmi Narayan Sogani (A3) and Shri Ankeet Jain (A4) have refused to provide voice sample for the said purpose which also caused inordinate delay in the investigation of this case.

6. In order to obtain voice sample of the accused persons, an application was already preferred by the CBI before the Court of learned Special Judge, CBI, Guwahati as the voice samples were needed for fair investigation. But, on 26.02.2020, the learned Special Judge, CBI had dismissed the application filed by the CBI stating that the CBI failed to test to ascertain that the interceptions of Tele-conversations so made were carried out in legal way as per the provision of Section 5(2) of the Indian Telegraph Act, 1988 and Rule 419 of Indian Telegraph Rules (Amendment) Rules, 2007.

7. The learned Special Judge, CBI, while dismissing the petition, clearly overlooked the provision of Section 5(5) of the Indian Telegraph Act *read with* Rule 419A of the Indian Telegraph Rules, which authorize law enforcement agencies to seek for legal interceptions of telephonic conversations in connection with offences of serious nature. The Indian Telegraph Amendment Rules, 2007 further provides that all request for such interceptions would only be considered after due examination/ screening by Review Committee setup under the provision of said Rules headed by the Cabinet Secretary, Government of India, consisting of Secretary of Government of India, In-Charge, the legal affairs and the Secretary to the Government of India, Department of Tele Communications.

8. It is further stated that out of 11 numbers of letters of permission of interception, 9 numbers were granted by the Union Home Secretary to the Government of India and 2 numbers of permissions were granted by the Director, CBI after due examinations of the request and considering the fact that interceptions were sought for the interest of the public order and safety and to prevent incitement to the commission of an offence. All the permissions were considered under the provision of Indian Telegraph Rules and the original Case Diary files with regard to the seizure of original documents relating to the permissions issued by the competent authorities, i.e. Union Home Secretary and Director, CBI, placed with CD No. 85, dated 25.09.2019, before the learned Special Judge, CBI. But the learned Special Judge, CBI erred in law by not giving it due consideration and the petitioner, therefore, craves leave of the Court to produce the same along with original permissions and letters. Thus, the CBI duly complied with all the provisions of law while intercepting the telephonic

conversations of phone numbers of the accused persons.

9. Mr. Haloi, learned Special Public Prosecutor, CBI submitted that the purpose of taking the voice sample is not the physical evidence and it is only to compare with the tapped recorded conversations which is a physical characters of the accused, but the learned Special Judge, CBI failed to consider this aspect of the matter and rejected the prayer of the prosecution and as such, the impugned order is liable to be set aside and quashed. He further submitted that the recording of voice sample of the accused persons is very much necessary for proper investigation of the matter and to compare the same with the recorded voice samples of the accused persons which is fair and reasonable having due regard to the mandate of Article 21 of the Constitution of Indian. More so, the learned Special Judge, CBI failed to appreciate the fact that the voice samples is a vital evidence to prove the case as in such cases, other corroborative evidences are rare and as such, the impugned order of rejecting the prayer for recording the voice samples of the accused respondents is liable to be set aside and quashed.

10. Mr. Haloi accordingly submitted that for the purpose of proper investigation of this case, the recording of the voice samples of the accused respondents are very much essential to compare with the recorded voice samples of the accused respondents and therefore prayed for setting aside and quashing of the order passed by the learned Special Judge, CBI rejecting the prayer of the CBI for recording of the voice samples.

11. The learned counsels appearing for the respondents, while hearing the petition, apart from raising some other issues, raised the issue of limitations and

it is submitted that the present petition is filed beyond the period of limitation which cannot be entertained. During the pendency of the present petition, the petitioners filed one Interlocutory Application which is registered as I.A.(Crl.) No. 505/2024 under Section 5 of the Limitation Act praying for condonation of delay of 22 days in preferring the present revision petition after rejection of prayer of recording of voice samples by the learned Special Judge, CBI.

12. So, before discussing on the other issues, let us discuss on the issue raised by the learned counsels for the respondents in regards to the point of limitation.

13. It is submitted by Mr. Haloi, learned Special Public Prosecutor, CBI that the impugned order was passed on 26.02.2020 and thus, the last date of filing of the criminal revision petition expires after 90 days of limitation on 25.05.2020, but the criminal revision petition could be filed on 16.06.2020 and as such, there was a delay of 22 days in filing the same. He further submitted that the delay was only due to obtaining the approval and to comply with some procedure of the Department and hence, it could be filed only with a delay of 22 days. There is no intentional laches or negligence on the part of the petitioner or on the part of its advocate, but only for observing some official/departamental formalities, the petition was filed with a delay of 22 days. In this context, Mr. Haloi also relied on a decision of Hon'ble Apex Court reported vide **(2021) 7 SCC 313 [Seshnath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Limited & Anr.]**, wherein the Hon'ble Apex Court has expressed the view that there is no bar to exercise by Court/Tribunal of its discretion to condone the delay even in absence of a formal application. Further, Mr. Haloi admitted that the petition was not supported with a separate

application for condonation of delay, but the delay was only due to observing some formalities of department/office and there was no laches or negligence on the part of the prosecution to file the petition with a delay of 22 days. He basically emphasized on paragraph Nos. 59, 61 & 100 of the said judgment, which reads as under:

"59. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute 'sufficient cause' or not would depend upon facts of each case. There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

61. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

100. In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay."

14. Mr. Haloi further relied on another decision of Hon'ble Supreme Court reported vide **(1963) SCC OnLine SC 59 [Manindra Land and Building**

Corporation Ltd. Vs. Bhutnath Banerjee & Ors.] wherein also the Apex Court has expressed the view that Section 5 of the Limitation Act empowers the Court to admit an application even if it is presented after expiry of the specified period of limitation if it is satisfied that the applicant has sufficient cause for not presenting it within time.

15. Accordingly, Mr. Haloi submitted that inadvertently the separate application for condonation of delay was not presented while preferring the revision petition, though it was filed after expiry of the limitation period with a delay of 22 days, but considering the entire facts and circumstances of this case, the present petition may be entertained condoning the delay of 22 days in preferring the present revision petition.

16. In this context, the learned counsel appearing on behalf of respondent No. 1, by filing his affidavit-in-opposition, submitted that the present criminal revision petition cannot be entertained which is barred by the period of limitation and the petition for condonation of delay under Section 5 of the Limitation Act required to be filed at the time of filing the connected criminal revision petition and at this stage, the separate petition for condonation of delay cannot be entertained. The learned counsel for the respondent No. 1 also submitted in this regard that the period of limitation is continuous and it runs from the time of filing the criminal revision petition and the actual delay is to be counted till filing of the instant petition. Till the filing of the instant petition, the delay is of 1461 days and thus, after such long gap of period of 4 years, the instant application for condonation of delay is not at all maintainable and the same is liable to be dismissed. More so, in the instant petition, the petitioner

could not show sufficient cause explaining the delay to condone the delay of 1461 days in preferring the present petition for condonation of delay.

17. The learned counsels representing the respondents further relied on the following decisions in support of their submissions:

- (i) (1999) 8 SCC 266 [Chandra Kishore Jha Vs. Mahavir Prasad & Ors.]**, wherein the Hon'ble Apex Court has expressed the view that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.
- (ii) Crl. A. No. 1133/2014 (arising out of SLP Crl. No. 2531/2014), decided on 08.05.2014**, wherein also the Hon'ble Apex Court has expressed the similar view.
- (iii) SLP Civil No. 31248/2018 [Pathapati Subba Reddy (died) by L.Rs. & Ors. Vs. The Special Deputy Collector (LA)]**, and the learned counsels for the respondents have emphasized on paragraph No. 26 of the judgment, which reads as under:

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law [laid down by](#) this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the [Limitation Act](#) have to be construed differently, such as [Section 3](#) has to be construed in a strict sense whereas [Section 5](#) has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in [Section 3](#) of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

18. So, it is the case of the petitioner that the present criminal revision petition is filed with a delay of 22 days though there is no separate prayer for limitation annexed along with the petition. One Interlocutory Application under Section 5 of the Limitation Act was presented only during the pendency of the present revision petition by the learned Special Public Prosecutor, CBI for condoning the delay of 22 days in preferring the petition.

19. On the other hand, it is the plea of the respondents that there is a delay of 4 years in presenting the petition for condonation of delay under Section 5 of the Limitation Act and hence, such petition for condonation of delay cannot be entertained at this stage. Further it is submitted by the learned counsel for the

respondents that there was no condonation petition at time of preferring the revision petition by the petitioner nor there is any whisper in the petition itself in regards to delay in preferring the criminal revision petition.

20. In case of **Seshnath Singh** (supra), as relied by the learned Special Public Prosecutor, CBI, it is the view of the Apex Court that condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. It is to be seen as to whether the explanation furnished by the petitioner would constitute 'sufficient cause' and the 'sufficient cause' would dependent upon the facts of each of the case. Here in the instant case, as discussed above, the petitioner could not prefer the revision petition within the statutory period of limitation. Criminal revision petition could be filed by the petitioner after observing all necessary required formalities of the department/concerned office and also took some time to get the approval from the higher authority. Thus, the explanation brought by the petitioner can be considered as reasonable and justified ground for delay in preferring the revision petition. More so, the delay was only for 22 days which can be condoned for the ends of justice. Further, allowing the connected Interlocutory Application by condoning the delay of 22 days will also not cause any prejudice to the respondents side. The respondents will get ample opportunity to contest the case and to place their defence at the time of final hearing of the said case. There are catena of judgments of the Hon'ble Apex Court wherein it is has been expressed the view that the limitation should not be considered with a liberal approach and the petition/appeal may be admitted even if it is presented after expiry of the specified period of limitation if it is satisfied that the application has 'sufficient cause' for not presenting the petition/appeal within time.

21. The argument placed by the learned counsel for the respondents that there was a delay of 1461 days in preferring the revision petition also cannot be admitted as the facts remain same that the revision petition was preferred with a delay of 22 days and there was not a delay of 1461 days in preferring the revision petition, though it is a fact that the petition for condonation of delay was filed after a considerable period only at the time of the hearing of the revision petition. Further, it is not a case that the revision petition was filed with a delay of 4 years. However, it cannot be denied that the petition for condonation of delay was filed only after considerable period at the time of hearing of the criminal revision petition. But considering the delay of only 22 days in preferring the revision petition and also for the substantial justice, this Court is of the opinion that that the delay can be condoned and the petition may be admitted for hearing.

22. Coming to the other issues, the learned counsel for the respondents raised the following issues at the time of hearing:

- (i) That the interceptions were done illegally.**
- (ii) There is no question of public safety or public emergency to intercept the telephonic conversation as required under Section 5 (2) of the Indian Telegraph Act.**

23. It is submitted by the learned counsels representing the respondents that the telephonic conversations of the accused persons, which have been intercepted, do not fall within the ambit of the criteria of public emergency and/or the interest of the public safety as laid down by the Hon'ble Apex Court.

In this context, they relied on a decision of Hon'ble Apex Court passed in the case of **Peoples Union for Civil Liberty Vs. Union of India & Ors. [(1997) 1 SCC 301]**, wherein it has been held that no interception of Telegraph can be done beyond the purview of the exceptions provided by Section 5(2) of the Indian Telegraph Act, 1885 and without adhering to the rules framed thereunder and as there were no rules framed by then Central Government and it would have taken some time by the Central Government to frame the rules for interception of Telegraph.

24. It is further submitted by the learned counsels for the respondents that the Central Government by its Notification dated 01.03.2007, GSR 193(E), framed the rules for interception of Telegraph under Section 7(2)(b) of the Indian Telegraph Rules, 1985 as was mandated by the Hon'ble Apex Court and therefore, the Mandamus in the case of **PUCL** (supra) having run its course, the said Rules which has been incorporated as Rule 419 A of the Indian Telegraph Rules, 1951 to occupy the field.

25. In that context, they relied on a decision of Hon'ble Apex Court passed in the case of **Hukam Chand Shyam Lal Vs. UOI & Ors. [(1976) 2 SCC 1228]** and basically emphasised on paragraph No. 13 of the judgment, which reads as under:

"13. Section 5(1), if properly construed, does not confer unguided & unbridled power on the Central Govt./State Govt./Specially Authorised Officer to take possession of any telegraph. Firstly, the occurrence of a 'public emergency' is the sine qua non for the exercise of power under this section. As a preliminary step to the exercise of further jurisdiction under this section the Govt. or the authority concerned must record its satisfaction as to the existence of such an emergency. Further, the existence of the emergency which is a pre-requisite for the exercise of power under this section, must be a 'public emergency' and not any other kind of emergency. The expression 'public emergency' has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to read as a whole. In

sub- section (1) the phrase 'occurrence of any public emergency' is connected with and is immediately followed by the phrase "or in the interests of the public safety". These two phrases appear to take colour from each other. In the first part of sub-s. (2) these two phrases again occur in association with each other, & the context further clarifies, with amplification, that a 'public emergency' within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that appropriate authority has to form an opinion with regard to the occurrence of a 'public emergency' with a view to taking further action under this section. Economic emergency is not one of those matters expressly mentioned in the statute. Mere 'economic emergency' as the High Court calls it-may not necessarily amount to a 'public emergency' & justify action under this section unless it raises problems relating to the matters indicated in the section."

26. The learned counsels for the respondents further stressed on Section 5 of The Indian Telegraph Act, 1885, wherein it is provided that on the occurrence of public emergency, or in the interest of the public safety, the Central Government or a State Government or any officers specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient to do so in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for the reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order. They further stressed on the point that as per Section 5 (2) of the Indian Telegraph Act, 1985, it permits the interception of messages in accordance with the provisions of the said Section in case of occurrence of any public emergency or in the interest of public safety. Unless the public emergency has occurred or

the interest of the public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the public at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorized officer cannot resort to telephonic tapping even though there is satisfaction that it is necessary or expedient so to do for interest of sovereignty and integrity of India etc. **[PUCL Vs. U.O.I., (1997) 1 SCC 301]**.

27. The learned counsel for the respondents also relied on the decision of Hon'ble Apex Court in **Vinit Kumar Vs. Central Bureau of Investigation & Ors. [2019 SCC OnLine Bom 3155]** which also speaks about the public safety and emergency and paragraph No. 13 of the said judgment reads as under, as emphasized:

"13. In view of the aforesaid clear and emphatic pronouncement of law on the subject by the Nine Judge Constitution Bench in [K. S. Puttaswami](#) (supra), it is no longer res-integra that :-

(a) The right to privacy is recognized by the Nine Judge Bench as inherent fundamental right having protection as an intrinsic part of the right to life and personal liberty under [Article 21](#) and as a part of the freedom guaranteed by Part III of the Constitution which is subject to specified restrictions;

(b) Any infringement of the right to privacy by State Authorities will have to meet the following four tests based on the "Principle of proportionality and legitimacy" :

- 1. The action must be sanctioned by law;*
- 2. The proposed action must be necessary in a democratic society for a legitimate aim;*
- 3. The extent of such interference must be proportionate to the need for such interference;*

4. There must be procedural guarantees against abuse of such interference.

(c) All earlier judgments suggesting to the contrary, are no longer binding precedents. The matters of infraction of the fundamental right to privacy would now have to necessarily satisfy the aforesaid tests, and cannot be dealt with on the basis of the overruled judgments in [M.P.Sharma](#) (supra) or [Kharak Singh](#) (supra) or based thereon or on the same line of reasoning like [R. M. Malkani](#) (supra)."

28. It is further submitted by the learned counsels appearing for the respondents that the telephonic conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Thus, the telephone tapping will infringe the right of a person under Article 21 of the Constitution of India unless it is permitted under the procedure and established law.

29. They further emphasized on paragraph No. 18 of the of the decision of Hon'ble Apex Court in the case of **PUCL** (supra) which reads as under:

"18. The right of privacy – by itself – has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."

(iii) Order of interception of message was not there while passing the order by the learned Special Judge and subsequently the orders were passed by the Director of Home Ministry.

30. The learned counsels representing the respondents submitted that the learned Special Judge, CBI had rightly dismissed the petition of the present petitioner/CBI as they failed to place any materials on record before the learned Court below to satisfy that the intercepted telephonic conversation have been intercepted in accordance with procedure established by law. By filing the subsequent affidavit, the petitioner side brought on record certain orders allegedly passed by the competent authority under Rule 419 (A) of the Telegraph Rules, 1951 to argue that the telephonic conversation was tapped as per law.

31. The learned counsels for the respondents further submitted that in a criminal trial, the admissibility of intercepted Telegraph as evidence, there are specific rules as being the procedural safeguards which must mandatorily be complied with (Rule 419 A of Indian Telegraph Rules, 1951) and without which the intercepted Telegraph if done illegally and unlawfully cannot be allowed to be admissible as evidence being hit by the ratio of the Nine Judge Constitution Bench judgment in case of **K.S. Puttaswami & Anr. Vs. Union of India & Ors. [(2017) 10 SCC 1]**, which is squarely applicable and will override the law as laid in Pooranmal case and the fundamental rights of the respondents cannot be infringed otherwise than due process of law.

32. Further it is submitted by the learned counsels for the respondents that the law as it is by Rule 419 A of the Indian Telegraph Rules, 1951 mandates that the intercepted material (during the first 7 days) are to be mandatorily destroyed by intercepting agency if permission to intercept the Telegraph as granted under sub-rule 2 of Rule 419 A of the Indian Telegraph Rules, 1951 by

the Secretary concerned is not approved by the Standing Review Committee under sub-rules 16 & 17 of rule 419 A of the Indian Telegraph Rules, 1951. It is the case of the CBI that the permission for interception of Telegraph as was granted by the Secretary, Ministry of Home Affairs, Govt. of India was not approved by the Review Committee, and thus the said intercepted material stood mandatorily destroyed and is presumed not to be in existence, and therefore, something that is not in existence cannot be led in evidence, or be proved before the learned Trial Court by the CBI. In this context, they relied on a decision of Hon'ble Delhi High Court in case of **Jatinder Pal Singh Vs. CBI (Crl. M.C. No. 3118/2012, dated 17.01.2022)** has held that illegally intercepted Telegraph would not be admissible as evidence, and would have to be mandatorily destroyed.

33. Further it is submitted that while passing the order dated 28.02.2020 by the learned Special Judge there was no orders of interception of the telephonic conversation of the phone numbers of the accused respondents in the Case Diary at the time of passing the order by the learned Special Judge. More so, in the interception order, there is no format and content of all the orders which are same irrespective of whether it was passed by the Director, CBI or Union Home Secretary except phone numbers and date. None of the orders bears the official seal or signatures nor those were passed in any official letter pads. None of the orders have been issued in the name of any particular person. All the interception orders are general orders not addressed to any particular person.

34. Further it is submitted that Sub-rule (8) of the Rule 419-A of the Rules obligates the Central Government or State Government, as the case may be, to

constitute a Review Committee. According to Sub-rule (9) of Rule 419-A of the Rules, the Review Committee, within a period of sixty days from the issue of directions, shall *suo moto* make necessary enquiries and investigations and record its findings as to whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of the Section 5 of the Act. If the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above, it may set aside the directions and order for destruction of the copies of the intercepted message or class of messages.

35. Reliance is also placed in the case of **Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496]**, wherein it has been observed by the Hon'ble Supreme Court that the principle of natural justice by judicial, quasi-judicial and even by administrative bodies must record reasons in support of its conclusions. Paragraph No. 47 of the said judgment reads as under:

"47. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) A quasi-judicial authority must record reasons in support of its conclusions.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) Reasons facilitate the process of judicial review by superior Courts.*
- (h) The ongoing judicial trend in all countries committed to rule of law and*

constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

36. Relying on the decision of Hon'ble Supreme Court passed in **Ritesh Sinha** (supra), it is submitted by Mr. Srivastava that there was no law to require accused to provide Voice Sample and if the accused did not want to give Voice Sample, he or she cannot be forced by the learned Magistrate to provide the same and to fill the legislative gap, the Hon'ble Apex Court abled the Magistrate

to direct the accused to provide the Voice Sample if so satisfied and thus the judgment dealt with only the jurisdiction to direct to provide Voice Sample and not the merits of the case as to whether the Magistrate can exercise the jurisdiction or not.

37. Per contra, it is submitted by Mr. Haloi, learned Special Public Prosecutor, CBI that while passing the order by the authority concerned, there is no need of elaborate discussion of the reasons while making the order. Rather such an elaborate discussion may affect the privacy of the party. In that context, he also cited a decision of the Hon'ble Delhi High Court passed in **W.P.(CRL) No. 1147/2020 (Santosh Kumar Vs. Union of India & Anr.)** and basically relied on paragraph No. 44 of the said judgment, which reads as under:

"44. The disclosure of elaborate reasons for interception orders would be against the modified disclosure requirements of procedural fairness which have been universally deemed acceptable for the protection of other facets of public including the source of information leading to the detection of crime or other wrong doing, sensitive intelligence information and other information supplied in confidence for the purpose of government or discharge of certain public functions. Furthermore, the Rule 419 A of the Telegraph Rules provide for extreme secrecy, utmost care and precaution in the matter of interception as it affects privacy."

38. Mr. Haloi further submitted that in the present petition, the matters pertain to corruption which is dangerous for public safety since economic crimes ultimately affect the economic safety of the entire country and it is citizen.

39. Mr. Haloi further relied on another decision of Madras High Court passed in **W.P. Nos. 5466, 5470 of 2020, W.M.P. Nos. 6391, 6394, 6396 and 6397 of 2020 (Sanjay Bhandari & Ors. Vs. The Secretary of Government. of India & Ors.), dated 23.11.2020**, and emphasized on

paragraph No. 14 of the judgment, which reads as under:

"14. That apart, in view of the above discussion the first respondent passed the orders for detection, prevention, investigation and prosecution of corrupt activities of the petitioners herein in accordance with the provision under Section 5(2) of the Indian Telegraph Act, 1885. Thereafter, the Court finds no violation of Section 5(2) of the Telegraph Act and also it would not amount to violation of the right to privacy under Article 21 and freedom of speech and expression guaranteed under Article 19(1) and 19(2) of the Constitution of India. Therefore, these writ petitions are devoid of merits."

40. Mr. Haloi, learned Standing Counsel, CBI also relied on another decision of the Hon'ble Delhi High Court passed in **Crl. M. C. No. 1534/2018, dated 07.12.2023 (Sanjiv Kumar Vs. The State of Govt. of NCT of Delhi)** and accordingly submitted that in the instant case, the prosecution has complied with the provision of Telegraph Act and obtained necessary authorization to intercept the phone of the respondents and therefore, the judgment of **PUCL** (supra) and **Jatinder Pal Singh** (supra) will not be applicable in the present case.

41. Accordingly, Mr. Haloi submitted that while dismissing the petition, the learned Special Judge overlooked the provision of Section 5(2) of the Indian Telegraph Act and Rule 419A of the Indian Telegraph Rules, amended in the year 2007, which authorized the law and the enforcement agencies to seek for legal interception of the telephonic conversations in connection with the offence of serious nature and here in the instant case also, out of 13 numbers of letter of permission for interception, 8 numbers of permissions were granted by the Home Secretary to the Government of India and 5 numbers of permissions issued by the Director, CBI after duly examining the request and considering the

fact that the interceptions were sought in the interest of public order and safety and to prevent incitement to the commission of an offence. Hence, Mr. Haloi submitted that in such nature of cases, the voice sample is very vital evidence to prove the case and in such type of cases, other corroborative evidence are rare and therefore, the order passed by the learned Special Judge, CBI is liable to be set aside and quashed.

42. In this context, the learned counsels for the respondents submitted that the cases relied by the CBI are general cases related to P.C. Act and not related to phone tapping under the Indian Telegraph Act except **Sanjay Bhandari's** case and therefore these cases are not relevant in the present case. Further it is submitted that the case of **Ritesh Sinha** (supra) is not applicable in this case and facts of the case of **Ritesh Sinha** (supra) is totally different from the present fact of the case.

43. I have considered the rival submissions put forwarded by the learned counsels appearing on behalf of the parties and also perused the materials available on record.

44. It is the case of the petitioner/CBI that after the dismissal of the prayer for recording of the voice samples of the present respondents by the learned Special Judge on 28.02.2020, one revision petition was filed before this Court, but subsequently the same was withdrawn on 07.11.2019 and another application was preferred before the learned Special Judge, CBI for permission to obtain voice samples of the accused persons. But the learned Special Judge, CBI overlooked the provision of Section 5(2) of the Indian Telegraph Act *read*

with Section 419A of the Indian Telegraph Rules (amended in 2007) which authorizes the law enforcement agency to seek for legal interception of telephonic conversation in connection with the offences of serious in nature. It is further the case of the petitioner/CBI that the Indian Telegraph Amendment Rules provide that all the request for such interception would only be considered after due examination/ screening by the Review Committee as setup under the provision of the said Rules, headed by the Cabinet Secretary, Government of India, considering of Secretary to Government of India, Department of Telecommunications. But, without considering the fact, the learned Special Judge arbitrarily rejected the prayer for recording of the voice samples of the present petitioners.

45. On the other hand, it is the case of the respondents that the entire interceptions were done illegally within 05.04.2018 to 09.04.2018. Further it is the case of the respondent that there is no question of public safety or public emergency to intercept the telephonic conversation as required under Section 5(2) of the Indian Telegraph Act. As per the respondents, the telephonic conversation of the accused persons, which have been intercepted, do not fall within the ambit of criteria of public emergency and/or the interest of the public safety as laid down by the Hon'ble Apex Court in the case of **PUCL** (supra). The judgment of the Apex Court in **PUCL** (supra) was mainly stressed by the learned counsels for the respondents, wherein it has been held that no interception of the telegraph can be done beyond the purview of the exceptions provided by Section 5(2) of the Indian Telegraph Act, 1885 and without adhering to the rules framed thereunder and as there were no rules framed by then Central Government, it would have taken some time by the Central

Government to frame the rules for interception of Telegraph.

46. For ready reference, Section 5(2) of the Indian Telegraph Act, 1885 is extracted hereinbelow:

"5. Power for Government to take possession of licensed telegraphs and to order interception of messages.

...

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."

47. In connection with the applicability of Section 5(2) of the Indian Telegraph Act, the learned counsels for the respondents also relied on various decisions, as referred above, wherein it is provided that unless public emergency has occurred or the interest of the public safety demands, the authorities have no jurisdiction to exercise power under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the public at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large.

48. Further it is the case of the respondents that the telephonic conversation is an important facet of a man's private life. Right to privacy would certainly

include telephone conversation in the privacy of one's home or office. Thus, the telephone tapping will infringe the right of a person under Article 21 of the Constitution of India unless it is permitted under the procedure and established law. But, here in the instant case, the order of interception of the messages was not there while passing the order by the learned Special Judge and subsequently the orders were passed by the Director of Home Ministry. Thus, it is submitted by the respondents side that the petitioner/CBI failed to place any material on record before the learned Court below to satisfy that the intercepted telephonic conversation have been intercepted in accordance with procedure established by law. More so, it is the claim of the respondents that in the interception order, there is no format and content of all the orders which are same irrespective of whether it was passed by the Director, CBI or Union Home Secretary except phone numbers and date. Further, none of the orders bears the official seal or signatures nor those were passed in any official letter pads. None of the orders have been issued in the name of any particular person. All the interception orders are general orders not addressed to any particular person. Thus, the orders for interceptions which were produced by the CBI are not the order which were illegally passed in accordance with the established law. More so, those were not placed before the Review Committee as required under Rule 419A of the Indian Telegraph Rules, 1951 which obligates the Central Government or the State Government as the case may be to constitute a Review Committee.

49. The amended provision of Rule 419A of the Indian Telegraph Rules provides as under:

"419-A. (1) Directions for interception of any message or class of messages under sub-

section (2) of Section 5 of the Indian Telegraph Act, 1885 (hereinafter referred to as the said (Act) shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India and by the Secretary to the State Government in-charge of the Home Department in the case of a State Government. In unavoidable circumstances, such order may be made by an officer, not below the rank of a Joint Secretary to the Government of India, who has been duly authorized by the Union Home Secretary or the State Home Secretary, as the case may be:

Provided that in emergent cases—

- (i) in remote areas, where obtaining of prior directions for interception of messages or class of messages is not feasible; or*
- (ii) for operational reasons, where obtaining of prior directions for interception of message or class of messages is not feasible;*

the required interception of any message or class of messages shall be carried out with the prior approval of the Head or the second senior most officer of the authorized security i.e. Law Enforcement Agency at the Central Level and the officers authorised in this behalf, not below the rank of Inspector General of Police at the state level but the concerned competent authority shall be informed of such interceptions by the approving authority within three working days and that such interceptions shall be got confirmed by the concerned competent authority within a period of seven working days. If the confirmation from the competent authority is not received within the stipulated seven days, such interception shall cease and the same message or class of messages shall not be intercepted thereafter without the prior approval of the Union Home Secretary or the State Home Secretary, as the case may be.”

50. Further, Rule 419 (17) (18) provides as under:

“419. (17) The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

(18) Records pertaining to such directions for interception and of intercepted messages shall be destroyed by the relevant competent authority and the authorized security and Law Enforcement Agencies every six months unless these are, or likely to be, required for functional requirements.”

51. Here in the instant case, it is seen that the order of interception was passed by the competent authority, i.e. the Director of CBI or Union Home Secretary, along with telephone numbers. As per Rule 419A of the Indian Telegraph Rules (Amended Rules), it authorizes the law enforcement agency to seek for legal interception of telephone conversation in connection with the offence of serious in nature. Further, as per the amended Rules, all the request for such interceptions would only be considered after due examination/screening by the Reviewing Committee as set up under the provision of said rules, headed by the Cabinet Secretary, Government of India, considering of Secretary to Government of India, Department of Telecommunications. Here in the instant case, it is seen that the order of interception, which were produced by the CBI, were passed by the Indian Home Secretary to the Government of India and the Director, CBI after due examination of the request for interceptions of the conversations of the present respondents considering the nature of the offence.

52. However, it is submitted by the learned counsels for the respondents that the orders were not placed before the learned Special Judge at the time of passing the impugned order. But, all the orders of interception were passed during the period of December, 2018 to February, 2019 by the competent authority and the order was passed by the learned Special Judge on 26.02.2020. There is also mention of orders of interception in the Charge-Sheet which is filed on 23.12.2022. Thus, the plea of non-production of orders of interception at the time of passing the order cannot be accepted.

53. Coming to the issue raised by the learned counsel for the respondents

with regard to “public safety” and “public emergency” which is mandatorily required for interception of any telegraph or telephonic conversation as provided under Section 5(2) of the Indian Telegraph Act, it is the case of the respondents side that in the present case there is no any such public emergency or public safety for interception of telephonic conversations of the respondent and there is no material to show that any public emergency or public safety arises for which it was necessary for interception of the telephonic messages. But, the present case is a case of corruption and the same are the economic and organized crimes and the conspiracy are hatched in most secretive manners. The impact of corruption on public safety cannot be gainsaid in the present times and considering this aspect of the case, the screening/review committee had passed the order for intercepting the telephonic messages of the present respondents after satisfying all the materials placed before the committee.

54. In the case as relied by the CBI/petitioner in **W.P. Nos. 5466, 5470 of 2020, W.M.P. Nos. 6391, 6394, 6396 and 6397 of 2020 (Sanjay Bhandari & Ors. Vs. The Secretary of Government. of India & Ors.), dated 23.11.2020**, the Hon’ble Madras High Court has held in paragraph No. 14 of the judgment as under:

“14. That apart, in view of the above discussion the first respondent passed the orders for detection, prevention, investigation and prosecution of corrupt activities of the petitioners herein in accordance with the provision under Section 5(2) of the Indian Telegraph Act, 1885. Therefore, this Court finds no violation of Section 5(2) of the Telegraph Act and also it would not amount to violation of the right to privacy under Article 21 and freedom of speech and expression guaranteed under Article 19(1) and 19(2) of the Constitution of India. Therefore, these writ petitions are devoid of merits.”

55. Though the present case is not directly involved with the public safety or

public emergency, but the nature of the case directly affects the economy of the society wherein the public money is involved. The plea of prejudice by the respondents will not sustain if they were asked to give voice sample and it would be open for the respondents to take all objections with regard to legality of the interceptions at the stage of trial. Furthermore, from the discussions made above, it is seen that the interception orders were passed by the competent authority for intercepting the messages/telephonic conversations of the respondents and from the nature of the case, it is also seen that it is the only evidence for the petitioner/CBI to substantiate their claim as all the conversations were made over telephone amongst the respondents. Further it is seen that all the interceptions have been done in accordance with law as provided under the Telegraph Act. It is also seen that all the interceptions orders were passed by the competent authority who were also the members of the review committee and hence, it cannot be held that there was no compliance of Section 5(2) of the Indian Telegraph Act.

56. The Hon'ble Apex Court in the case of **Ritesh Sinha** (supra) has held that the fundamental right to privacy is subject to public interest and therefore not absolute. Accordingly, in exercise of his jurisdiction under Article 142 of the Constitution of India, the Supreme Court held that till exclusive provision are made in the Cr.P.C. by the Parliament, the Magistrate would have the power to order the person to give his voice sample for the purpose of investigation of a crime.

57. It is the admitted position that as per Section 5(2) of the Indian Telegraph Act, an order of interception can be issued either in case of "public emergency"

or for the interest of the “public safety” as per law laid down by the Hon’ble Supreme Court in case of **PUCL** (supra). But, considering the peculiar circumstances and the nature of the case, the interceptions can also be allowed in such a nature of case, though it is not directly associated with the public emergency or the public safety. But, as discussed above, the money which is involved and subject matter of this case is the public money and which otherwise will affect the entire society at large. Further, in any event, it will be open for the respondents to raise objection with regard to non-compliance of statutory proviso for interceptions of the telephonic calls/telephonic messages at an appropriate stage or at the time of trial. Allowing the prayer for recording of voice sample cannot be held to be non justifiable, rather not allowing will cause prejudice to the prosecution as the voice sample or intercepted messages are the primary evidence for the CBI to substantiate their plea. The respondents may challenge the legality or evidentiary value of the intercepted message at the appropriate stage of trial if such justified reasons appears to them from the evidence which may come in their favour at that time.

58. So, from the entire discussions made above and also considering the nature and gravity of the offence and further considering the fact that the recording of the voice sample may be the only evidence for the CBI to substantiate its case, this Court is of the opinion that the petitioner/CBI has made out a case calling for the interference by this Court of the impugned order 26.02.2020, passed by the learned Special Judge, CBI, Guwahati in CBI Case No. RC-01(A)/2019/CBI/ ACB /Guwahati.

59. In view of the foregoing discussion and reasons arrived, there appears

merit for consideration and accordingly the same is allowed. Consequently, the impugned order 26.02.2020, passed by the learned Special Judge, CBI, Guwahati in CBI Case No. RC-01(A)/2019/CBI/ACB/Guwahati, is hereby set aside and quashed. The petitioner/CBI is hereby allowed to proceed with the collection of the voice samples of the accused/respondents in accordance with law.

60. Considering the long pendency of this case, the learned Special Judge, CBI, Guwahati is hereby expected to proceed with the instant case and to dispose of the matter as expeditiously as possible.

61. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant